

# **APPENDIX PERFORMANCE MEASURES**

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## APPENDIX PERFORMANCE MEASURES

### 1. INTRODUCTION

- 1.1 This Appendix sets forth the measurements, if met by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) demonstrate non-discriminatory access to PACIFIC/NEVADA's Operations Support Systems (OSS) including the five recognized OSS functions (Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, and Billing), as well as, interconnection and resale.
- 1.2 SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc.
- 1.3 As used herein, PACIFIC/NEVADA means the applicable above listed ILECs doing business in California and Nevada.
- 1.4 As used herein, PACIFIC means the applicable above listed ILEC doing business in California.
- 1.5 As used herein, NEVADA means the applicable above listed ILEC doing business in Nevada.
- 1.6 As used herein, Service Bureau Provider means a company which has been engaged by CLEC to act on the CLEC's behalf for purposes of accessing SBC-LEC's OSS application-to-application interfaces.
- 1.7 The performance measures contained herein are not intended to create, modify or otherwise affect parties' rights and obligations with respect to OSS access, interconnection or resale. The existence of any particular performance measure, or the language describing that measure, is not evidence that CLEC is entitled to any particular manner of access, that these measures relate solely to access to OSS, interconnection or resale, or is it evidence that PACIFIC/NEVADA's obligations are limited to providing any particular manner of access. The parties' rights and obligations to such access are defined elsewhere, including the relevant laws, FCC and CPUC/PUCN decisions/regulations, tariffs, and interconnection agreements.

## 2. RESERVATION OF RIGHTS

- 2.1 By agreeing to the performance measures incorporated by reference into this Agreement pursuant to Section 11 hereof, PACIFIC/NEVADA does not admit that an apparent less-than-parity condition reflects discriminatory treatment without further factual analysis as defined in Attachment B.

## 3. PERFORMANCE REMEDIES PLAN

### 3.1 Sole Remedy

- 3.1.1 These liquidated damages shall be the sole and exclusive remedy of CLEC for PACIFIC/NEVADA's failure to meet specified performance measures and shall be in lieu of any other damages CLEC might otherwise seek for such breach through any claim or suit brought under any contract or tariff.

### 3.2 Payments/Credits

- 3.2.1 PACIFIC/NEVADA will provide billing credits for the associated liquidated damages on or before the 30th day following the due date of the performance report for the month in which the obligation arose.
- 3.2.2 In any given month in which the aggregate payment to all CLECs in this state exceeds the procedural threshold limit set forth in Section 3.2.3, PACIFIC shall not be required to pay any amounts exceeding that limit unless and until a hearing is held to determine whether the payment of any amounts above the limit would be fair and reasonable under the circumstances. Amounts payable below the limit shall be prorated among the CLECs in the amounts proportional to what they would otherwise be entitled to collect absent a hearing.

### 3.2.3

State	Monthly Maximum
California	\$3M
Nevada	\$.150M

#### **4. SPECIFIED MEASURES TO WHICH REMEDIES APPLY**

4.1 Liquidated damages for PACIFIC/NEVADA's failure to meet specified performance measures will only apply to the Specified Measures listed below:

##### **4.2 Pre-Ordering**

4.2.1 Average Response Time (to Pre-Order Queries)

##### **4.3 Ordering**

4.3.1 Average FOC/LSC Notice Interval

4.3.2 Average Reject Notice Interval

##### **4.4 Provisioning**

4.4.1 Percent of Orders Jeopardized

4.4.2 Average Jeopardy Notice Interval

4.4.3 Average Completed Interval

4.4.4 Coordinated Customer Conversion as a Percentage On-Time

4.4.5 PNP Network Provisioning

4.4.6 Percent of Due Dates Missed

4.4.7 Held Order Interval

4.4.8 Provisioning Trouble Reports

4.4.9 Percent Troubles in 30 Days For New Orders

4.4.10 Average Completion Notice Interval

##### **4.5 Maintenance**

4.5.1 Customer Trouble Report Rate

4.5.2 Percent of Customer Trouble Not Resolved Within Estimated Time

4.5.3 Average Time to Restore

4.5.4 Frequency of Repeat Troubles In 30 Day Period

##### **4.6 Network Performance**

4.6.1 Percent Blocking on Common Trunks

4.6.2 Percent Blocking on Interconnection Trunks

4.6.3 NXX Loaded by LERG Effective Date

4.6.4 Network Outage Notification

#### **4.7 Billing**

- 4.7.1 Usage Timeliness
- 4.7.2 Accuracy of Usage Feed
- 4.7.3 Wholesale Bill Timeliness
- 4.7.4 Usage Completeness
- 4.7.5 Recurring Charge Completeness
- 4.7.6 Non-Recurring Charge Completeness
- 4.7.7 Bill Accuracy
- 4.7.8 Accuracy of Mechanized Bill Feed

#### **4.8 Database Updates**

- 4.8.1 Average Database Update Interval
- 4.8.2 Percent Database Accuracy
- 4.8.3 E911/911 MS Database Update Average

#### **4.9 Collocation**

- 4.9.1 Average Time to Respond to A Collocation Request
- 4.9.2 Average Time to Provide A Collocation Arrangement

#### **4.10 Interfaces**

- 4.10.1 Percent Of Time Interface Is Available
- 4.10.2 Average Notification of Interface Outages
- 4.10.3 Center Responsiveness

### **5. ROOT CAUSE ANALYSIS**

- 5.1 PACIFIC/NEVADA may use Root Cause Analysis to demonstrate that an apparent out-of-parity condition was attributable to an atypical event beyond the reasonable control of PACIFIC/NEVADA. The list of “excludable events” that could be considered as part of PACIFIC/NEVADA’s Root Cause Analysis is reflected in Appendix A hereto. In addition, the following provisions apply to Root Cause Analysis:
- 5.2 Where performance data suggests an out-of-parity condition exists, PACIFIC/NEVADA may use Root Cause Analysis to demonstrate there was no discriminatory treatment (the situations in which PACIFIC/NEVADA may invoke Root Cause Analysis – referred to as “excludable events” – are reflected in Appendix A).

When Root Cause Analysis is invoked, PACIFIC/NEVADA will have the burden of proving that but for the occurrence of an “exclusion event” PACIFIC/NEVADA would have succeeded on the measure in question.

- 5.3 If a dispute arises over whether PACIFIC/NEVADA’s Root Cause Analysis is sufficient to excuse an apparent out-of-parity condition, the Parties will first attempt to resolve the disagreement through an informal discussion. PACIFIC/NEVADA will prepare a Root Cause Analysis report and provide it to CLEC. If the Parties agree that the Root Cause Analysis report is sufficient to excuse PACIFIC/NEVADA, the report will be signed by the Parties and PACIFIC/NEVADA will be relieved from any associated payments. If CLEC does not accept PACIFIC/NEVADA’s Root Cause Analysis, the Parties agree to seek a resolution through an Expedited Dispute Resolution process, to be determined by the Commission.
- 5.4 Pending the resolution of any dispute, PACIFIC/NEVADA shall retain custody of the associated funds. The funds in question will be transferred to CLEC when and if it is determined through the EDR process that Pacific’s Root Cause Analysis is not sufficient to excuse PACIFIC/NEVADA.
- 5.5 Appendix A identifies the categories of events that may form the basis of Root Cause Analysis and provides examples of the types of events within each category. The list is only illustrative; it is not definitive.
- 5.6 Force majeure events will also be treated as excludable events
- 5.7 PACIFIC/NEVADA will provide to CLEC, at the time of submitting a Root Cause Analysis report to CLEC, all non-confidential documents that were used as part of PACIFIC/NEVADA’s Root Cause Analysis.
- 5.8 Inadequate forecasts shall also be treated as an excludable event. PACIFIC/NEVADA may demonstrate as part of its Root Cause Analysis that but for the inadequate forecast provided by CLEC, PACIFIC/NEVEDA would have complied with the performance measure at issue. Appendix C hereto provides the terms of the forecasting exclusion.
- 5.9 The Root Cause Analysis provisions of this section are enforceable, except to the extent the state commission that approved this Agreement under Section 252 of the Act adopts provisions that are inconsistent with or in any material way different from these provisions, in which case the state commission-ordered root cause analysis provisions shall supersede these provisions upon their final approval.

- 5.10 Delays or other problems resulting from actions of a Service Bureau Provider acting on behalf of CLEC for connection to SBC-LEC's OSS, including Service Bureau Provider provided processes, services, systems or connectivity shall be treated as excludable events.

## **6. LIQUIDATED DAMAGES AS FORM OF REMEDY**

- 6.1 In recognition of either: 1) the loss of End User opportunities, revenues and goodwill which a CLEC might sustain in the event of a Specified Performance Breach; 2) the uncertainty, in the event of a Specified Performance Breach, of a CLEC having available to its End User opportunities similar to those opportunities available to PACIFIC/NEVADA at the time of a breach; or 3) the difficulty of accurately ascertaining the amount of damages a CLEC would sustain if a Specified Performance Breach occurs, PACIFIC/NEVADA agrees to pay the CLEC, subject to Section 6.2.
- 6.2 The Parties agree and acknowledge that a) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances known by the Parties at the time of the negotiation and entering into this Agreement, with due consideration given to the performance expectations of each Party; b) the Liquidated Damages constitute a reasonable approximation of the damages the CLEC would sustain if its damages were readily ascertainable; and c) neither Party will be required to provide any proof of the Liquidated Damages.

## **7. LIQUIDATED DAMAGES PAYMENT PLAN; GENERALLY**

- 7.1 Liquidated damages apply to the available, non-diagnostic measures designated in Section 4 when PACIFIC/NEVADA delivers non-complaint performance.
- 7.2 The Table of Critical Values (Section 10) gives the maximum number, F, of measurements of those required to be reported to the CLEC that may fail the Performance Criteria in any month. Liquidated damages apply to non-compliant measures that are in excess of the applicable value of F.
- 7.3 None of the liquidated damages provisions set forth in this proposal will apply during the first three months after a CLEC first purchases the type of service or unbundled network element(s) associated with a particular performance measurement or introduction of a new measure.
- 7.4 There are two kinds of failures of the Performance Criteria. *Ordinary* failures are failures on a measure for one month or two consecutive months. *Chronic* failures are failures on a measure for three consecutive months. Ordinary failures may be excused



up to the applicable value of F from the Table of Critical Values. Chronic failures may not be excused in that manner. \$500 is paid for each ordinary failure in excess of F. \$15,000 is paid for each Chronic failure. For example, if the value of F is 8 and there are 10 Ordinary failures and 1 Chronic failure in a month, then the Liquidated Damages for that month would be  $(10-8)*\$500 + \$15,000 = \$16,000$ . If there were 7 Ordinary failures and no Chronic failures, no Liquidated Damages would be paid.

## 8. LIQUIDATED DAMAGES; METHOD OF CALCULATION

8.1 PACIFIC/NEVADA and CLEC agree to use the following as statistical tests for evaluating the compliance of CLEC results with the Performance Criterion. These tests are applicable if the number of data points are greater than 30 for a given measurement.

8.2 The following list describes the tests to be used in evaluating the performance criterion. In each test, the important concept is the probability that the CLEC's results are significantly worse than either the comparable result for PACIFIC/NEVADA or the benchmark (whichever is relevant to the test). This probability is compared with the P value from the Table of Critical Values to decide if the measure meets the Performance Criterion. Probabilities that are less than the P value are deemed to have failed the test.

For parity measures that are expressed as Averages or Means, the following (Modified) Z test applies:

$$z = (\text{DIFF}) / \sigma_{\text{DIFF}}$$

Where;

$$\text{DIFF} = M_{\text{ILEC}} - M_{\text{CLEC}}$$

$$M_{\text{ILEC}} = \text{ILEC Average}$$

$$M_{\text{CLEC}} = \text{CLEC Average}$$

$$\sigma_{\text{DIFF}} = \text{SQRT} [\sigma_{\text{ILEC}}^2 (1/n_{\text{CLEC}} + 1/n_{\text{ILEC}})]$$

$$\sigma_{\text{ILEC}}^2 = \text{Calculated variance for ILEC.}$$

$$n_{\text{ILEC}} = \text{number of observations or samples used in ILEC measurement}$$

$$n_{\text{CLEC}} = \text{number of observations or samples used in CLEC measurement}$$

The probability of the Z statistic is obtained from a standard normal distribution.

For parity measures that are expressed as Percentages or Proportions:

$$z = (\text{DIFF}) / \sigma_{\text{DIFF}}$$

Where;

$$\text{DIFF} = P_{\text{ILEC}} - P_{\text{CLEC}}$$

$$P_{\text{ILEC}} = \text{ILEC Proportion}$$

$P_{CLEC}$  = CLEC Proportion

$$\sigma_{DIFF} = \sqrt{P_{ILEC}^2 (1/n_{CLEC} + 1/n_{ILEC})}$$

$$\sigma_{ILEC}^2 = P_{ILEC} (1 - P_{ILEC}).$$

$n_{ILEC}$  = number of observations or samples used in ILEC measurement

$n_{CLEC}$  = number of observations or samples used in CLEC measurement

The probability of the Z statistic is obtained from a standard normal distribution.

For parity measures that are expressed as Rates or Ratios:

$$z = (DIFF) / \sigma_{DIFF}$$

Where;

$$DIFF = R_{ILEC} - R_{CLEC}$$

$$R_{ILEC} = \text{num}_{ILEC} / \text{denom}_{ILEC}$$

$$R_{CLEC} = \text{num}_{CLEC} / \text{denom}_{CLEC}$$

$$\sigma_{DIFF} = \sqrt{R_{ILEC} (1/\text{denom}_{CLEC} + 1/\text{denom}_{ILEC})}$$

The probability of the Z statistic is obtained from a standard normal distribution.

In calculating the difference between the performances the formulae given above apply when a larger CLEC value indicates a higher quality of performance. For cases in which a smaller CLEC value indicates a higher quality of performance the order of subtraction should be reversed (i.e.,  $M_{CLEC} - M_{ILEC}$ ,  $P_{CLEC} - P_{ILEC}$ ,  $R_{CLEC} - R_{ILEC}$ ).

For measures with benchmarks that are expressed as Averages or Means:

$$t = (DIFF) / \sigma_{DIFF}$$

Where;

$$DIFF = M_{CLEC} - BM$$

$$M_{CLEC} = \text{CLEC Average}$$

$$BM = \text{Benchmark}$$

$$\sigma_{DIFF} = \sqrt{\sigma_{CLEC}^2 (1/n_{CLEC})}$$

$$\sigma_{CLEC}^2 = \text{Calculated variance for CLEC.}$$

$n_{CLEC}$  = number of observations or samples used in CLEC measurement

The probability of the t statistic is obtained from Student's distribution with  $n_{CLEC} - 1$  degrees of freedom.

For measures with benchmarks that are expressed as Percentages or Proportions:

When high proportions designate good service, the probability of the CLEC result is given by

$$\sum_{x=0}^K \sum_{x=0}^N \sum_{x=0}^N B^x (1-B)^{N-x}$$

Where

K = PN

P = CLEC proportion

N = number of observations or samples used in CLEC measurement

B = benchmark expressed as a proportion

When low proportions designate good service, the probability of the CLEC result is given by

$$\sum_{x=0}^K \sum_{x=0}^N \sum_{x=0}^N B^x (1-B)^{N-x}$$

with the same definition of symbols as is given above.

- 8.3 The following table will be used for determining the critical probabilities that define the Performance Criterion as well as the number of non-compliant measures that may be excused in a given month. The table is read as follows: (1) determine the number of measures to which Liquidated Damages are applicable and which have sample sizes greater than or equal to 30 cases. Let this number be M. (2) Find that row of the table such that M is within the range of values given in the first two columns of the table. (3) Reading across that row determine the value of F from the third column. (4) The critical probability for determining compliance in each statistical test performed on the M measures is calculated by interpolating the last two columns of the table for that row. For example, suppose a CLEC has 50 measures. The applicable row has the range of 49 to 60 measures. The F value for that row is 7 and the critical probabilities is

$$6.2\% - (6.2\% - 5\%) \frac{50 - 49}{60 - 49} = 6.1\%$$

**9. TABLE OF CRITICAL VALUES**

Number of Sub-measures Reported to the CLEC (M)		(F)	Critical Probabilities for Assessing Parity and Compliance (P)	
Minimum Value in the Range Associated with F	Maximum Value in the Range Associated with F		Probability for Minimum Value in the Range	Probability for Maximum Value in the Range
1	1	0	1.00%	1.00%
2	3	1	10.00%	5.90%
4	9	2	14.10%	5.30%
10	17	3	9.30%	5.20%
18	26	4	7.70%	5.20%
27	37	5	7.00%	5.10%
38	48	6	6.50%	5.10%
49	60	7	6.20%	5.00%
61	72	8	6.00%	5.00%
73	85	9	5.90%	5.00%
86	98	10	5.70%	5.00%
99	111	11	5.60%	5.00%
112	124	12	5.60%	5.00%
125	138	13	5.60%	5.00%
139	152	14	5.50%	5.00%
153	167	15	5.50%	5.00%
168	181	16	5.40%	5.00%
182	196	17	5.40%	5.00%
197	210	18	5.40%	5.00%
211	225	19	5.40%	5.00%
226	240	20	5.30%	5.00%
241	255	21	5.30%	5.00%
256	270	22	5.30%	5.00%
271	286	23	5.30%	5.00%
287	301	24	5.30%	5.00%
302	317	25	5.30%	5.00%
318	332	26	5.20%	5.00%
333	348	27	5.20%	5.00%
349	364	28	5.20%	5.00%
365	380	29	5.20%	5.00%
381	395	30	5.20%	5.00%
396	411	31	5.20%	5.00%
412	427	32	5.20%	5.00%
428	444	33	5.20%	5.00%

## **10. LIMITATIONS AND DISPUTE RESOLUTION**

- 10.1 Any dispute regarding whether a PACIFIC/NEVADA performance failure is excused under the terms of this Agreement will be resolved, through negotiation, through a dispute resolution proceeding under applicable Commission rules or, if the parties agree, through commercial arbitration with the American Arbitration Association.

## **11. PERFORMANCE MEASURES**

- 11.1 The parties agree that the following service performance measures shall apply to the services provided by PACIFIC/NEVADA under this Agreement:
- 11.2 Except as otherwise provided herein, the service performance measures ordered by the state Commission that approved this Agreement under Section 252(e) of the Act, including any subsequently Commission-ordered modifications, shall be incorporated into this Agreement by reference. In the event that the state commission that approved this Agreement subsequently orders liquidated damages/remedies with respect to performance measures in a proceeding binding on both parties, the parties agree to incorporate commission-ordered liquidated damages/remedies into this Agreement once the decision approving such remedies becomes final and any appeals are exhausted (unless otherwise agreed by the parties). The parties expressly reserve all of their rights to challenge any liquidated damage/remedy award, including but not limited to the right to oppose any such order and associated contract provision because remedy/liquidated damage provisions must be voluntarily agreed to and **PACIFIC/NEVADA** does not at this time so agree.

## **12. AUDITING AND REPORTING REQUIREMENTS**

- 12.1 The parties agree that the following auditing and reporting requirements shall apply with respect to the performance measures incorporated into this Agreement.
- 12.2 The auditing and reporting requirements ordered for reporting by the state commission that approved this Agreement under Section 252 of the Act, including any subsequently commission-ordered modifications, shall be incorporated into this Agreement by reference.

## APPENDIX A

### FORECAST MAPPING TO PERFORMANCE MEASURES

	TYPE OF FORECAST		
	Service Order	Collocation	Interconnection
<b><i>Pre-Ordering</i></b>			
?? 1 - Av. Response Time	X		
<b><i>Ordering</i></b>			
?? 2 - Av. FOC Notice Interval	X		X
?? 3 - Av. Reject Notice Interval	X		
?? 4 - Percent of Flow Through Orders			
<b><i>Provisioning</i></b>			
?? 5 - Percent of Orders Jeopardized			
?? 6 - Av. Jeopardy Notice Interval	X		X
?? 7 - Av. Completed Interval	X		X
?? 8 - Percent Completed within Standard Interval			
?? 9 - Coordinated Customer Conversions			
?? 10 - PNP Network Provisioning			
?? 11 - Percent of Due Dates Missed			
?? 12 - Percent Company Missed Due Dates due to Lack of Facilities			
?? 13 - Delay Order Interval to Comp. Date			
?? 14 - Held Order Interval			
?? 15 - Provisioning Trouble Reports			
?? 16 - Percent Troubles in 30 Days for New Orders			
?? 18 - Av. Comp. Notice Interval	X		X

	TYPE OF FORECAST		
	Service Order	Collocation	Interconnection
<b><i>Maintenance</i></b> ?? 19 - Customer Trouble Report Rate ?? 20 - Percent of Customer Trouble not Resolved within Est. Time ?? 21 - Av. Time to Restore ?? 22 - POTS Out of Service <24 Hours ?? 23- Frequency of Repeat Troubles in 30 day period			

## ATTACHMENT B FACTUAL ANALYSIS

The following incidences should be allowed as reasonable exceptions which can be used mitigate a statistical finding of out-of-parity (or benchmark miss) providing the incident impacted to the CLEC to such a degree to make otherwise compliant performance non-compliant:

I. Significant activity by a third party external to Pacific \*(not controllable by Pacific)

A. Damage to facilities :

- ?? major cable cuts
- ?? gas/water main break
- ?? manhole/structure fire
- ?? central office/facilities fires not caused or under control of Pacific
- ?? other damage to facilities cause by a third party

B. Failure of third party systems

- ?? LNP-service degradation/out-of-service of NPAC

C. Threats to personal safety

- ?? Bomb threat causing evacuation of a Pacific building (service center, central office, etc.)
- ?? Other threats to personal safety which impact the execution of Pacific's activities on behalf of the CLEC

II. Environmental events not considered force majeure

A. Environmental events causing service center evacuation/building condemnation

- ?? building fire
- ?? building damage cause by external force
- ?? hazardous condition (gas leak, other chemical leaks, presence of hazardous material)

III. Failure of CLEC process/system

A. CLEC ordering system with degraded service or out-of-service for an extended period of time, resulting in:

- ?? a backlog of requests sent all at once
- ?? the CLEC changing from electronic transmission to manual (fax) for duration of the outage

B. chronic, severely impaired testing capabilities on part of CLECs

C. chronic failure on the part of the CLEC to provision own network in a timely manner in establishing new or migrated end user service which also involves activities on the part of Pacific

\*Note: Pacific's sub-contractors or other Pacific agents not considered an external third party.



